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Sub-Commission on Prevention of
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Forty-ninth session
Item 11(c) of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED:

OTHER NEW DEVELOPMENTS

Written statement submitted by International Educational Development, Inc., a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[27 July 1997]

GE.97-13215 (E)

1. The Sub-Commission, in its resolution 1996/16, requested the Secretary-General to report to it at its forty-ninth session on nuclear weapons, chemical weapons, fuel-air bombs, napalm, cluster bombs, biological weaponry and weaponry containing depleted uranium in light of current standards of human rights and humanitarian (armed conflict) law.

2. In response, International Educational Development submitted many studies and reports to the Secretary-General many of which focused on depleted uranium. We also prepared and submitted a memorandum containing a legal analysis 1/ of the weaponry in light of current legal standards. In the memorandum we conclude that the use of these weapons represents a violation of customary humanitarian law as well as a grave breach of the Geneva Conventions of 1949 and the 1977 Protocols Additional to the Geneva Conventions. We also conclude that use of these weapons violates the Universal Declaration of Human Rights and the two International Covenants on Human Rights, and a number of treaties relating to genocide, torture and other human rights. Accordingly, the use of these weapons by any country in armed hostilities or in any other context is already prohibited, irrespective of any treaties banning them or whether a particular country has ratified existing treaties banning them. The memorandum also concludes that the development, production and storage of these weapons pose grave danger of violations of human rights.

3. As the memorandum shows, the main concerns of weaponry in the context of humanitarian law are:

(a) The geographical concern - certain weapons have immediate effects that cannot be confined to legal military targets and therefore are certain to violation humanitarian law rules protecting combatants hors de combat, civilians and/or neutral parties; 2/

(b) The temporal concern - certain weapons have long-term or residual effects that either will not affect enemy soldiers until after cessation of hostilities or may affect civilians or neutral parties; 3/

1/ Karen Parker, Memorandum on weapons and the laws and customs of war, IED/HLP (1997).

2/ Because the rules of military operations allow military actions only against military targets, weapons that act over a large geographic area will certainly cause undue civilian casualties and are therefore per se in violation of the laws and customs of war. Incidental civilian casualties are generally not in violation of the laws and customs of war. The user of weapons must be able to know for certain and in advance that their use will not result in undue civilian casualties, impossible to do when a weapon acts over a large area.

3/ Military operations and weapons may only be used during the period when war is taking place. Weapons that continue to injure or harm former enemy soldiers, civilians or third parties after the hostilities are over are per se in violation of the temporal limitation.

(c) The humanity concern - certain weapons cause undue suffering of enemy soldiers with little utility for military objectives or cause severe illness, disability or birth defects; other weapons pose grave risk of causing starvation of the civilian population due to severe disruption in subsistence agriculture; 4/

(d) The environmental concern - certain weapons cause long-term or permanent damage to the natural environment and thus continue to act long after the cessation of hostilities and against illegal military targets. 5/

4. The memorandum also shows that the use of these weapons has implications in human rights law, and can constitute torture. Those listed weapons that have a prolonged generational effect (especially weapons containing depleted uranium whose half-life is 4.5 billion years), causing birth defects, illnesses and disease for more than one generation, are particularly in violation and their use could constitute genocide. 6/ It is also patently clear that all the listed weapons except fuel-air and cluster bombs necessarily violate rights to life, health, food and water, shelter and work. 7/

4/ The humanity limitation is the oldest limitation on weaponry. The origin of these concerns arises both from the principles of humanity and the dictates of the public conscience as set out in the Hague Conventions of 1899 and 1907 in relation to restrictions to weaponry drawn from the principle of military necessity. While a legitimate goal of war is to kill or injure the enemy military forces and capacity, certain weapons have only the intention of permanently maiming. For example, laser weapons used to cause blindness or biological weapons used to alter genetic patterns have little military value and/or will have effects long after the cessation of hostilities and against persons who are not military targets.

5/ Included in this limitation is the prohibition against targeting objects (natural or otherwise) essential to the civilian population - drinking water and the natural sources of drinking water, foodstuffs and agricultural areas necessary for the production of foodstuffs. Weapons that alter nature necessarily violate the geographical and temporal limitation.

6/ The components of the definition of genocide relating to infliction of conditions of life calculated to bring about physical destruction, in whole or in part, of a group; and the imposition of measures intended to prevent births within the group are particularly relevant to this issue. See Convention on the Prevention and Punishment of the Crime of Genocide, in force 12 January 1951, 78 U.N.T.S. 277, Article II.

7/ Use of fuel-air and cluster bombs in armed hostilities may violate these rights but would have to be determined on a case-by-case basis.

5. The memorandum analyses the legal doctrines of just cogens 8/ and erga omnes 9/ applied to weaponry and concludes that under these principles all States have an irrevocable duty to eliminate them. It also shows that victims of weapons that violate humanitarian and human rights law have a right to compensation deriving from both humanitarian and human rights law.

6. IED is convinced that further study by the Sub-Commission is imperative owing to the importance of the issues raised in response to Sub-Commission resolution 1996/16 and because of the immense quantity of material already submitted that could not be adequately addressed. The recent opinion of the International Court of Justice 10/ should be more fully evaluated in relation to the listed weaponry. Other related issues to address that have had inadequate recent attention include: (a) the issue of State secrecy and the public's right to know; (b) the right to health; (c) intergenerational rights; (d) transboundary violations; (c) State coercive acts and human rights; (f) the substantive evolution of genocide, ethnocide and ecocide; (g) the right to subsistence and the right to life; and (h) the need to establish a permanent claims tribunal or procedure by which victims of violations may seek and receive compensation.

8/ Jus cogens ("known law") or peremptory norms are the highest rules of international law. See Karen Parker and Lyn Neylon, "Just Cogens: Compelling the law of Human Rights", 12 Hastings Int'l and Comp. L. Rev. 411 (1989). Some scholars emphasize that jus cogens norms are essential to maintain law and legal systems, others that they are essential in upholding humanity, others that they are essential to uphold world order. Ibid., pp. 414-416, citing, inter alia, Ramcharan, Gormley, Tunkin, Suarez, D'Amato, Christianson, Janis, Fitzmaurice, Oppenheim, Pictet, Verdross.

9/ Erga omnes obligations, as established by the International Court of Justice, are owed by States to the international community as a whole. See Barcelona Traction, Light and Power Co. (Belgium v. Spain), 1970 International Court of Justice Reports 3, 32. See also, Parker and Chew, Compensation for Japan's World War II War-Rape Victims, 17 Hastings Int'l and Comparative Law Review 497 (1994) at 519-21, citing, inter alia, Juste Ruiz, "Las obligaciones erga omnes en derecho internacional publico" in Estudios de Derecho Internacional 230 (1979); Paolo Piccone, "Obblighi reciproci e obblighi erga omnes nel campo della protezione internazionale dell'ambiente marino dall'inquinamento" in Diritto internazionale e protezione dell'ambiente marino (Vincenzo Starace (ed.), 1983).

10/ Legality of the Threat or Use of Nuclear Weapons, 1996 International Court of Justice Reports.